

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

ASSOCIATION OF AMERICAN
RAILROADS,
Plaintiff,

v.

Civil No. 1-23cv815 (DJN)

JEHMAL T. HUDSON, *et al.*,
Defendants.

ORDER

(Denying Various Motions as Moot, Canceling Hearing and Setting Deadline)

This matter comes before the Court on its own initiative and on various motions, including: the Motion to Dismiss by Defendants Michael Rolband and Stephen Brich, (ECF No. 18), the Motion to Dismiss by Defendant Jehmal T. Hudson, (ECF No. 20), Plaintiff the Association of American Railroads' ("Plaintiff") Consent Motion for Extension of Time to Respond to the Motions to Dismiss, (ECF No. 22), Plaintiff's Amended Motion for Extension of Time, (ECF No. 25), the Motion for Leave to File Brief of Amicus Curiae by the Virginia, Maryland, and Delaware Association of Broadband Cooperatives, (ECF No. 26), the Motion for Leave to File Brief of Amicus Curiae by the VCTA-Broadband Association of Virginia and NCTA-Internet and Television Association, (ECF No. 27), and Plaintiff's Consent Motion to Continue the Hearing on Defendants' Motions to Dismiss, (ECF No. 28).

Plaintiff has now filed an Amended Complaint, (ECF No. 35), superseding the original complaint, (ECF No. 1). *Young v. City of Mount Ranier*, 238 F.3d 567, 572 (4th Cir. 2001). The Court therefore DENIES Defendants' pending Motions to Dismiss, (ECF Nos. 18, 20) as moot. For the same reason, the Court DENIES Plaintiff's Consent Motion for Extension of Time, (ECF

No. 22), and Plaintiff's Amended Motion for Extension of Time, (ECF No. 25), as moot.

Defendants shall have fourteen (14) days from the entry of this Order to either file any Motions to Dismiss the Amended Complaint, (ECF No. 35), or to otherwise answer.

The Court also DENIES the pending Motions for Leave to File Briefs of Amicus Curiae, (ECF Nos. 26, 27), as moot. The Virginia, Maryland, and Delaware Association of Broadband Cooperatives, the VCTA-Broadband Association of Virginia and the NCTA-Internet and Television Association (and other interested parties) may file new Motions for Leave to File Briefs of Amicus Curiae, but the Court notes that “[a] court should only grant leave to file an amicus curiae brief if the court ‘deems the proffered information timely and useful.’” *FERC v. Powhatan Energy Fund, LLC*, 2017 WL 11682615, at *1 (E.D. Va. Mar. 15, 2017) (granting leave to file amici brief where the Amici “clearly have a special interest in the subject matter” of the suit and where no opinion had yet issued, rendering the motion for leave to file timely).

Additionally, Plaintiff has now exhausted its ability to file an amended complaint as of right. *See* Fed. R. Civ. P. 15(a)(1)(B). Plaintiff therefore may now only amend its complaint with either Defendants’ written consent or by leave of this Court. *Id.* 15(a)(2). Unless the interests of justice so require, the Court is disinclined to permit successive amended complaints.

Furthermore, the Court advises the parties that it does not utilize Local Civil Rule 7(e). Accordingly, motions will be adjudicated without argument unless the Court determines that oral argument would be useful. Additionally, the Court relies on the U.S. Magistrate Judges for settlement purposes only, but decides all pre-trial motions itself. The Court therefore CANCELS the hearing previously scheduled for October 13, 2023, at 10 a.m., and DENIES Plaintiff’s Consent Motion to Continue the Hearing on Defendants’ Motions to Dismiss, (ECF No. 28).

Lastly, the Court directs the Parties' attention to the use of the proper caption for this case. Every pleading filed in this action must bear the following caption:

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Defendants.

While every pleading filed in this action must bear the above caption, all in-person proceedings in this case will occur in the Richmond courthouse.

Let the Clerk file a copy of this Order electronically and notify all counsel of record.

It is so ORDERED.

_____/s/_____
David J. Novak
United States District Judge

Richmond, Virginia
Dated: September 6, 2023